Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte SANTOKH S. BADESHA, GEORGE J. HEEKS,
ROBERT M. FERGUSON,
DAVID J. GERVASI and ARNOLD W. HENRY

_____

Appeal No. 2003-0479
Application No. 09/416,148

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ON BRIEF

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Before KIMLIN, DELMENDO and POTEATE, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

REQUEST FOR REHEARING

Appellants request rehearing of our decision of March 31, 2003, wherein we affirmed the examiner's rejections of all the appealed claims under 35 U.S.C. § 103.

We have thoroughly reviewed each of the arguments presented in appellants' Request. However, we remain of the opinion that the burden is properly upon appellants to demonstrate that the

inclusion of Yu's epoxy silane coupling agent in the fuser layer of Chen would not necessarily, or inherently, result in a crosslinked product of a fluoroelastomer and an epoxy silane. As noted in our decision, appellants do not dispute the examiner's legal conclusion that it would have been obvious for one of ordinary skill in the art to substitute the epoxy silane of Yu for the functional silane of Chen.

Appellants contend that, unlike in the claimed invention, "Chen et al. teaches curing of a fluorocarbon by the use of a basic nucleophilic cure system such as a bisphenol" (page 2 of Request, third paragraph). However, while it is true that the basic necleophile of Chen cures the fluorocarbon, we find it reasonable to conclude that the fluorocarbon of Chen would also be crosslinked by the epoxy silane in view of Figs. 3 and 4 of Yu. Appellants' Request, which includes a citation of Flory's *Principles of Polymer Chemistry*, does not address the mechanism depicted by Yu, which is cited in our original decision. To the extent that the paragraph bridging pages 4 and 5 of appellants' Request addresses this issue, appellants have not established that the bonding depicted by Yu would not be considered crosslinking by one of ordinary skill in the art.

Regarding the § 103 rejection of claims 14-24 over Bingham, appellants have not convinced us of error in our adoption of the examiner's reasoning that "[i]f heating the instant composition results in cure of the copolymer by the organosilane, as alleged by the appellants, then heating of the composition of Bingham et al. must result in at least some cure of fluoroelastomer by the organosilane whether Bingham et al. teach, desire, and/or realize it" (page 16 of answer, first paragraph). Although appellants urge that Bingham's use of curing agents, such as Dupont Curative 20, "would result in formation of crosslinked polymer with crosslinking groups having different groups of atoms" (page 6 of Request), appellants have not established, let alone explained, why crosslinking with the epoxy silane would not also occur. By virtue of the "comprises" language, appealed claims 1 and 14 are "open" to compositions which also comprise the crosslinked fluoroelastomers of Bingham.

One final point remains. Notwithstanding appellants' characterization of the claimed invention as directed to a fuser member comprising a crosslinked product of a fluoroelastomer and an epoxy silane curative, the appealed claims fail to actually

define such. Rather, the claims define a fuser member comprising a crosslinked product of a composition comprising a fluoroelastomer and an epoxy silane curative, with there being no requirement that the crosslinked product results from a reaction between the fluoroelastomer and the epoxy silane.

In conclusion, based on the foregoing, appellants' request is granted to the extent we have reconsidered our decision, but denied with respect to making any changes therein.

DENIED

EDWARD C. KIMLIN Administrative Patent Judge	)	
ROMULO H. DELMENDO Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
LINDA R. POTEATE Administrative Patent Judge	)	

eak/vsh

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